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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/678,487

10/03/2003

Joseph L. Dvorak

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12/06/2005

AKERMAN SENTERFITT

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EXAMINER

LEE, BENJAMIN C

ART UNIT

PAPER NUMBER

2632

DATE MAILED: 12/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action SummaryApplication No. **X**

10/678,487

Applicant(s)

DVORAK ET AL.

Examiner

Benjamin C. Lee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/3/03, 11/12/03.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Status

1. Claims 1-21 are pending.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the claimed "food coordination system" (see claim 15) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

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3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1 and 3-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Nellhaus (US pat. #5,845,264).

Nellhaus discloses:

a) Claim 1: A method for coordinating a suitability of using objects together, comprising the steps of: reading information from a first object to be used by an individual (58, 66 of Fig. 3A); retrieving data associated with the object (66, 100 of Fig. 3A); reading information from at least a second object to be used by an individual (72 of Fig. 3A); retrieving data associated with at least the second object (66, 100 of Fig. 3A); applying rules indicating the suitability of using the first object with at least the second object (col. 5, line 61 to col. 6, line 5 and inherent from 74, 402 of Fig. 3B).

b) Claim 3: The method of claim 1, wherein the first object and at least the second object are drug containers (Fig. 2 and col. 3, lines 12-21 whereby a gel cap medication form comprises medication inside the gel cap container).

c) Claim 4: The method of claim 1, wherein the steps of reading information from the first object and from at least the second object comprises reading information from a barcode on a label associated with at least one among the first object and at least the second object (42 of Fig. 2).

Claim Rejections - 35 USC § 103

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5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 6, 8-10, 12-13 and 16-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nellhaus.

1) Claim 6: Nellhaus discloses the method of claim 1, except the claimed wherein the steps of retrieving data for the first object and retrieving data for at least the second object comprises retrieving data from a remote server via a wireless network connection.

Nellhaus discloses retrieving data for the first object and retrieving data for at least the second object comprises retrieving data from database 100 and 402 (Figs. 3A-3B), and that when used as a portable unit, data may be reduced as a result of the database's memory limitations (col. 6, lines 11-16). It would have been obvious to one of ordinary skill in the art at the time of the claimed invention to implement such database in the form of a remote server with a wireless network connection as a shared, centralized database large enough to provide all the data desired and necessary for the intended functions for multiple users to reduce cost for a system of users while not having to contend with reduced data availability.

2) Claim 8: Nellhaus discloses the method of claim 1, except the claimed step of customizing said rules.

However, it would have been obvious to one of ordinary skill in the art at the time of the claimed invention to include customization of the rules in Nellhaus such as by editing of the software or database so as to account for errors and updates.

3) Claim 9: Nellhaus renders obvious all of the claimed subject matter as in the consideration of claims 1 & 6, including: the claimed tag (42 of Fig. 2) on a first object to be used by an individual (40 of Fig. 2 and 58, 66 of Fig. 3A); a tag (42 of Fig. 2) on at least a second object to be used by the individual (72 of Fig. 3A); and a portable communication device (col. 6, line 11 and consideration of claim 6) having a processor programmed to: read information from the tag on the first object and from the tag on at least the second object; retrieve data associated with the first object and at least the second object; retrieve rules relating to the use of the first object and at least the second object; apply said rules to the use of the first object and at least the second object (consideration of claim 1); and provide feedback to the individual (76, 79 of Fig. 3B).

4) Claim 10: Nellhaus renders obvious all of the claimed subject matter obvious as in claim 9, including wherein the portable communication device further comprises a bar code scanning device (12) for scanning bar codes on at least one among the first object and the second object.

5) Claim 12: Nellhaus renders obvious all of the claimed subject matter obvious as in claim 9, wherein the claimed further comprising a connection to a remote server containing at least one among a database having the data associated with the first object and at least the second object and a database containing the rules relating to the use of the first object and at least the second object is met by the consideration of claim 6.

6) Claim 13: Nellhaus renders obvious all of the claimed subject matter as in 9, plus the consideration of claim 8.

7) Claim 16: Nellhaus renders obvious all of the claimed subject matter as in claim 9,

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including:

--the claimed drug coordination system of first and second drugs for rule analysis of the suitability of using the drugs together (Fig. 3B).

8) Claim 17: Nellhaus renders obvious all of the claimed subject matter as in the consideration of claim 9.

9) Claim 18: Nellhaus renders obvious all of the claimed subject matter as in claim 17, plus the consideration of claim 10.

10) Claim 19: Nellhaus renders obvious all of the claimed subject matter as in claim 17, plus the consideration of claim 12.

11) Claim 20: Nellhaus renders obvious all of the claimed subject matter as in the consideration of claim 17, wherein:

Nellhaus discloses retrieving data for the first object and retrieving data for at least the second object comprises retrieving data from database 100 and 402 (Figs. 3A-3B), and that when used as a portable unit, data may be reduced as a result of the database's memory limitations (col. 6, lines 11-16). It would have been obvious to one of ordinary skill in the art at the time of the claimed invention to implement such database in the form of a remote server with a wireless network connection as a shared, centralized database large enough to provide all the data and rules desired and necessary for the intended functions for multiple users for determining match to reduce cost for a system of users while not having to contend with reduced data availability.

12) Claim 21: Nellhaus renders obvious all of the claimed subject matter as in claim 17, including:

--the claimed display feedback (76 in Fig. 3B).

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7. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nellhaus in view of Mosher, Jr. et al. (US pat. #5,979,941) and Tawil (US pat. #6,036,064).

1) Regarding claim 2, Nellhaus discloses the method of claim 1, except the claimed wherein the first object and at least the second object are articles of clothing.

Nellhaus discloses scanning barcodes of 2 drugs into the computer system to determine an interaction relationship between the 2 drugs by looking up information in a database using the 2 barcodes. Mosher, Jr. et al. teaches applying barcode or RFID labels to 2 objects in order to determine nexus between the 2 objects in which such nexus can be any kind of relationship and the 2 objects can be any kind of objects (col. 1, lines 57 to col. 2, line 20; col. 4, lines 28-35 & 45-50; and col. 6, lines 33-48), while Tawil teaches the known application of barcode tags on articles of clothing to identify matching pieces that belong together (col. 1, lines 60-66).

In view of the teachings by Nellhaus, Mosher, Jr. et al. and Tawil, it would have been obvious to one of ordinary skill in the art at the time of the claimed invention that the system of Nellhaus can be applied to objects other than medicine according to Mosher, Jr. et al., and specifically can be applied to coordinating a suitability of using first and second articles of clothing as taught by Tawil by simply specifying the nexus particular to clothing article coordination in the database and software according to such intended use.

8. Claims 7 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nellhaus in view of Mosher, Jr. et al., Tawil and Tubbs et al. (US pat. #5,967,562).

1) Regarding claim 7, Nellhaus met all of the claimed subject matter as in claim 1, plus the obvious consideration of claim 2 in view of Mosher, Jr. et al. and Tawil, while:

While Nellhaus teaches using a computer software and database to apply rules to determine

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whether 2 objects match rule criteria, Tubbs et al. further teaches the know use of rules in specifically establishing/determining the matching of clothing/fashion (e.g. criteria/rule based on style, color family and color contrasting intensity disclosed in the Abstract and specification).

In view of the teachings by Nellhaus, Mosher, Jr. et al., Tawil and Tubbs et al., it would have been obvious to one of ordinary skill in the art at the time of the claimed invention to use and apply fashion rules such as taught by Tubbs et al. in a system such as taught by Nellhaus, Mosher, Jr. et al. and Tawil when determining clothing matches.

2) Regarding claim 14, Nellhaus renders obvious all of the claimed subject matter as in claim 9, plus the consideration of claim 7 in view of Mosher, Jr. et al., Tawil and Tubbs et al.

9. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nellhaus in view of Mosher, Jr. et al. and Krulak et al. (US pub. #2001/0025279A1).

1) Claim 15: Nellhaus render obvious all of the claimed subject matter as in claim 9, except the claimed wherein the system is a food coordination system and the first and second objects are ingestible items.

Nellhaus discloses scanning barcodes of 2 drugs into the computer system to determine an interaction relationship between the 2 drugs by looking up information in a database using the 2 barcodes. Mosher, Jr. et al. teaches applying barcode or RFID labels to 2 objects in order to determine nexus between the 2 objects based on the system determination in which such nexus can be any kind of relationship and the 2 objects can be any kind of objects (col. 1, lines 57 to col. 2, line 20; col. 4, lines 28-35 & 45-50; and col. 6, lines 33-48), while Krulak et al. teaches the known coordination of food by applying rules to the use of first and second ingestible items to determine pairing or complementing relationship ([0003] and [0047]).

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In view of the teachings by Nellhaus, Mosher, Jr. et al. and Krulak et al., it would have been obvious to one of ordinary skill in the art at the time of the claimed invention that the system of Nellhaus can be applied to objects other than medicine according to Mosher, Jr. et al., and specifically can be applied to coordinating a suitability of using first and second articles of ingestible items (food) as taught by Krulak et al. by simply specifying the nexus particular to food item coordination in the database and software according to such intended use.

10. Claims 5 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nellhaus in view of Mosher, Jr. et al.

1) Regarding claim 5, Nellhaus discloses the method of claim 1, except the claimed wherein the steps of reading information from the first object and from at least the second object comprises wirelessly reading information from a radio frequency identifier tag (RFID) associated with at least one among the first object and at least the second object.

While Nellhaus uses barcode identifiers, Mosher, Jr. et al. teaches the known alternative uses of bar code and RFID tags and readers/scanners (col. 4, lines 28-35 & 45-50). It would have been obvious to one of ordinary skill in the art at the time of the claimed invention that an RFID tag can alternatively to be used in place of the bar code identifier tag in Nellhaus as taught by Mosher, Jr. et al. for the advantage that RFID tag reading does not require direct line-of-sight.

2) Regarding claim 11, Nellhaus renders obvious all of the claimed subject matter as in claim 9, wherein the claimed “tag on the first object and the tag on at least the second object are radio frequency identification tags and the portable communication device further comprises a transceiver for reading information wirelessly from the radio frequency identification tags” is met by the consideration of claim 5 in view of Mosher, Jr. et al.

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Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

1) US patents 5886634, 5813153, 6629014, 5963136

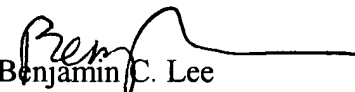
--Known systems/methods of determining match between first and second objects.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin C. Lee whose telephone number is (571) 272-2963.

The examiner can normally be reached on Mon -Th 11:00Am-7:30Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel Wu can be reached on (571) 272-2964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Benjamin C. Lee
Primary Examiner
Art Unit 2632

B.L.